



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Tina (Santos) Velez,  
Department of Law and Public Safety

CSC Docket No. 2017-2472

Request for Waiver of Repayment  
of Salary Overpayment

**ISSUED: April 9, 2018 (SLD)**

Tina (Santos) Velez, an Agency Services Representative 3 with the Division of State Police, Department of Law and Public Safety, requests a waiver of repayment of salary overpayment, pursuant to *N.J.S.A.* 11A:3-7, which provides that when an employee has erroneously received a salary overpayment, the Civil Service Commission (Commission) may waive repayment based on a review of the case.

By way of background, the appointing authority appointed Velez to the title Senior Clerk Typist (\$32,984.20, step 4, salary range A08). Subsequently, Velez filed a request for a classification review. Velez pursued the matter of her reclassification with the Division of Agency Services (Agency Services). Agency Services reviewed all documentation supplied and in its September 16, 2016 decision, noted that the appropriate title for her position was Agency Services Representative 3 (title code 56358, salary range A16), effective September 17, 2016. In an October 31, 2016 memorandum, the appointing authority notified Velez that as a result of the foregoing, her new salary would be \$41,230.15, step 1 of her new salary range (A16), as reflected in her November 18, 2016 paycheck.

Subsequently, in a January 24, 2017 Revised Determination, Agency Services noted that its prior decision was incorrect in noting that she was to be placed in the title of Agency Services Representative 3 (title code 56358), which was a 40-hour work week title. Rather, it noted that it had recently been informed, that Velez's position was actually a 35-hour work week position. Thus, it determined that her proper title was the 35-hour work week Agency Services Representative 3 (title code 56360, salary range A14) title, effective September 17, 2016. As a result, her record

was corrected to reflect her September 17, 2016 appointment to the title of Agency Services Representative 3 (\$37,767.75, step 1, salary range A14).

On appeal, Velez argues that the \$3,462.41 decrease to her salary, and the resulting \$1,239.23 overpayment she would be responsible for has caused her a financial hardship. Specifically, she asserts that, based on the appointing authority's October 31, 2016 memorandum, she purchased a home and was approved for a mortgage. She notes that with the decrease to her salary, the costs for her April 2017 wedding, and other bills, she can no longer afford the mortgage.<sup>1</sup>

Velez also argues that she has been performing the same duties since March 2009, and had requested a classification review in March 2013. Velez claims that due to her being given "wrong information" she was placed in the wrong title and her request was denied.<sup>2</sup> Velez argues that although she still believes that the proper title for her position is Agency Services Representative 4, she filled out the subject position classification questionnaire (PCQ) requesting the title of Agency Services Representative 3, which she was finally granted. Velez argues that after many years of fighting to be appointed to the correct title, it is unfair that she is not provided with the salary she was initially told would be her new salary. Moreover, Velez notes that she has not received an increment in over two years.

Velez maintains that she is not appealing this agency's correction of her title from the 40-hour work week title to the appropriate 35-hour work week title. Alternatively, Velez notes that she would be willing to work 40 hours per week instead. She also argues that she should be placed on step three of salary range A14, which would be closer to the original salary she was told that she would be receiving. Velez asserts that by starting her on step three of salary range A14, it would avoid her having a financial hardship and would be the "fairest thing to do" since the decrease to her salary was through "no fault of her own."

In response, the appointing authority notes that it cannot support Velez's appeal to place her on step 3 of salary range A14, as her placement on step 1 was correct. The appointing authority also asserts that Velez's claims concerning her prior classification appeal have no relevance to the instant matter. The appointing authority indicates that the overpayment amount of \$1,239.23 has been remitted by the appellant.

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<sup>1</sup> In relevant part, Velez submits a January 3, 2017 Loan Commitment letter for \$225,834. However, Velez submits no further financial information.

<sup>2</sup> Although Velez raises arguments concerning the 2013 classification audit request, in *In the Matter of Tina Santos* (CSC, decided November 18, 2015), the Civil Service Commission (Commission) denied her appeal of Agency Services' decision which found that her position was properly classified as a Senior Clerk Typist. Therefore, since Velez already had an opportunity to raise those concerns in that matter, the Commission will not address them in this matter.

## CONCLUSION

*N.J.A.C.* 4A:3-4.21 Salary overpayments: State service, provides as follows:

- (a) The [Commission] may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:
1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;
  2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;
  3. The terms of the repayment schedule would result in economic hardship to the employee.

It is well settled that **all** of the factors outlined in *N.J.A.C.* 4A:3-4.21 must be satisfied to successfully obtain a waiver of the repayment obligation. Thus, in *In the Matter of Thomas Micai v. Commissioner of Department of Personnel, State of New Jersey*, Docket No. A-5053-91T5 (App. Div., July 15, 1993), the Superior Court of New Jersey, Appellate Division, affirmed the Commissioner of Personnel's decision to deny a request for waiver of repayment of salary overpayment, finding that, although Micai had established that the overpayment was the result of an administrative error, he failed to show that enforcement of the repayment would create economic hardship.

While Velez meets the first two prongs of *N.J.A.C.* 4A:3-4.21(a), she clearly does not meet the standard to satisfy (a)3. In this regard, although Velez asserts that the lower salary and any repayment amount would result in economic hardship to her, other than general statements, she has not provided any specific information concerning her economic situation. See *In the Matter of Ruth Samonski* (Commissioner of Personnel, decided July 5, 2005) (Waiver of repayment of a salary overpayment in the amount of \$20,568.40 for improperly receiving SLI benefits denied, where Velez failed to provide any information to establish that the repayment would cause an economic hardship). Compare, *In the Matter of Peter Spencer* (Commissioner of Personnel, decided December 13, 1996) (Waiver of salary overpayment granted since repayment would cause an economic hardship based on employee's level of compensation). Moreover, while Velez's reduction in salary is significant, that issue is not reviewable under *N.J.A.C.* 4A:3-4.21, which **only** deals

with overpayments. Additionally, the repayment amount in this matter was \$1,239.23, which has been already repaid.

With regard to Velez's argument that she should be placed on a higher step than she was entitled to, the Commission does not agree. In this regard, there is no dispute that Velez's salary was properly calculated upon her promotion to the subject title pursuant to *N.J.A.C.* 4A:3-4.9. Accordingly, Velez is not entitled to any additional monies.

**ORDER**

Therefore, it is ordered that this request be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE DAY OF , 2018



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